WGAW WRITERS GUILD OF AMERICA, WEST

Protecting and Promoting a Competitive Media Marketplace

Protecting and promoting competition in our media marketplace is of vital concern to the Writers Guild of America, West (WGAW), its members and the public at large. Currently, a small number of vertically integrated media companies are responsible for nearly all the original content viewed by Americans on the major broadcast and cable networks. The five companies that own the broadcast networks produce an overwhelming majority of the series aired on network primetime.[1] Since 2008, independent programming as a percentage of the fall primetime lineup has fallen from 22 percent to a mere 13 percent.[2]

Broadcast Network Primetime Fall TV Series

	1989	1999	2008	2009	2010
Independently Produced Series	76%	28%	22%	14%	13%
Media Conglomerate Produced Series	24%	72%	78%	86%	87%

In addition to eliminating content from independent sources, the broadcast networks have also increasingly engaged in a strategy of self-sourcing for programming. By 2010, a majority of the primetime series programming on each network was produced by an in-house studio.

Broadcast Network Fall Lineup: Series Produced by In-House Production Entity

Network	2008	2009	2010
ABC	50%	48%	60%
CBS	35%	57%	61%
CW	64%	89%	90%
FOX	53%	67%	72%
NBC	67%	81%	63%

The rise in cable networks has not created a more competitive landscape in television, as the same companies producing programming for the broadcast networks also own many of the largest cable networks and produce a majority of the cable dramas and comedies in primetime. Among the 85 cable networks reaching at least 50 million subscribers, 65 percent are owned in whole or in part by a company that also owns a broadcast network.[3]

[1] The media conglomerates represented include CBS Corporation, Comcast-NBCU, News Corporation, Time Warner and The Walt Disney Company.

[2] The WGAW defines independent producers as studios or production companies that are not owned or affiliated with a major broadcast or cable network or an MVPD (multichannel video programming distributor). Such a definition is essential because it exposes the true amount of programming that reaches the air without the market power or guaranteed distribution provided by vertical integration.

[3] CBS and Viacom are majority owned by the same company, National Amusements

Analysis of Primetime Original Programming on Basic Cable Networks[4]

	2007-2008	2008-2009	2009-2010
Independently Produced Series	11	19	21
Media Conglomerate Produced Series	26	40	49
Total	37	59	70
Percent Independent	30%	32%	30%

Compounding this concentration in production and exhibition is a consolidated market of multichannel video programming distributors (MVPDs). In 2010, the four largest MVPDs in the U.S. provided service to 68 percent of all MVPD subscribers nationally, up from 50 percent in 2002.[5]

This level of concentration control deprives writers of a competitive market in which to sell their creative works and empowers the dominant companies to make increasing demands of talent, making it difficult for writers to continue developing new content. The detrimental effects of industry concentration must be remedied by reinstituting competition into these markets and protecting the development of competitive content distribution platforms on broadband and mobile Internet.

We urge lawmakers and regulators to take specific actions to protect a competitive and diverse media marketplace.

Institute Minimum Requirements for Genuinely Independent Programming

The WGAW supports a requirement that the broadcast networks devote not less than 25 percent of their primetime schedule to original programming owned and produced by independent sources. Such a requirement would represent meaningful promotion of a competitive media marketplace. Independent producers should be defined as studios or production companies that are not owned by or affiliated with a major broadcast or cable network or a MVPD provider. The requirement should apply to each programming category, including scripted programming.

Protect the Development of New Competitive Platforms for Content

Protecting an open Internet is vital to the development of new competitive platforms for content. Absent this protection, the companies that control traditional entertainment will find ways to raise the barriers to entry online and limit new competition. The FCC's Open Internet rules were a first step in protecting the nascent online video market. These rules must be extended to mobile Internet, where the rapid growth of tablets is spurring the adoption of wireless viewing of video content. The FCC must also be vigilant in monitoring industry practices with anti-competitive outcomes such as bandwidth capping, which will impede the growth of the online video market by making it cost-prohibitive to subscribers.

Mandate an AllVid Adapter Device

The WGAW supports the FCC's efforts to promote competition and innovation in set-top box delivery of video content to U.S. households and views the AllVid effort as an integral part in that process.

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[4] This analysis includes comedies and dramas airing on 16 basic cable networks. These programs are most closely substitutable to broadcast network primetime series. The media conglomerates represented include Comcast-NBCU, News Corporation, Time Warner, The Walt Disney Company and Viacom.

[5] Jeffery Eisenach, "The Economics of Retransmission Consent," National Association of Broadcasters, March 2009, p.1, Available from National Association of Broadcasters, http://www.nab.org/documents/resources/050809EconofRetransConsentEmpiris.pdf. SNL Kagan, "U.S. Multichannel Industry Benchmarks," and "U.S. Cable Subscriber Highlights," Available from SNL Kagan, http://www.snl.com.

Enabled by a robust set-top box market, content creators will benefit from the increased ability to deliver independent and diverse content to the television screen. Set-top boxes integrating content from multiple sources would increase the diverse content available for viewing on the television set and provide meaningful competition to the concentrated markets of broadcast and cable television. Unleashing competition in the set-top box market and allowing consumers to access both MVPD and Internet-delivered independent content on the same screen is a vital action to realize the potential for competition enabled by net neutrality.

Prohibit Further Media Consolidation

The media marketplace needs to be more competitive, not less. Consumers deserve access to more diverse content, not less. Content creators deserve a market where competition for their product allows them to capture the economic value that matches their contribution to the final product. Any mergers, whether primarily horizontal or vertical, will only serve to exacerbate the detrimental trends currently in place. The FCC must scrutinize any proposed media mergers that reduce the number of competitive firms at any stage of the production chain and meet its public interest obligations to protect diversity and competition by acting decisively to prohibit further media consolidation.

AT&T – T-Mobile Merger

The WGAW is opposed to the proposed merger of AT&T – T-Mobile because of its detrimental impact on competition in the wireless market. The combination of AT&T and T-Mobile would grant the new company control of 45 percent of the wireless market, reducing the market to a duopoly.[6] Remedies mitigating the harm to consumers and content creators resulting from this merger do not exist. The WGAW has joined with Center for Media Justice, Consumers Union, New America Foundation and Media Access Project in petitioning the FCC to deny this merger.

The merger would eliminate a key national competitor and would enable AT&T to stifle innovation, increase prices, and decrease choices for wireless customers. Growth through acquisition arguably will reduce incentives to invest internally in network expansion and will lead to fewer jobs, rather than more, as AT&T has asserted.

The proposed merger of AT&T and T-Mobile will have a detrimental impact on the nascent market for wireless delivery of video programming. The growth of wireless devices such as smartphones and tablet computers has made mobile video viewing more attractive to consumers than ever before. However, the lack of competition resulting from this merger would reduce incentives to develop robust video content offerings to consumers or offer video programming at reasonable prices. The merger would also grant AT&T significant market power over content creators seeking wireless distribution. Content creators would have little power in negotiations with AT&T, as the company's control of almost half of the wireless market would necessitate acceptance of AT&T's terms in order to reach consumers.

Who We Are

WGAW is a labor organization representing more than 8,000 professional writers of motion pictures, television, radio, and Internet programming, including news and documentaries. For more information on the WGAW, please visit: www.wga.org.

[6] Corporate Crime Reporter, "Antitrust Institute Says T-Mobile AT&T Merger Appears to be Anti-Competitive," Apr. 1, 2011, http://www.corporatecrimereporter.com/tmobileatt04012011.htm.

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WGAW Position on the Proposed AT&T – T-Mobile Merger

The Writers Guild of America, West (WGAW) is extremely concerned with the detrimental impact this merger would have on competition in the wireless market. The combination of AT&T and T-Mobile would grant the new company control of 45 percent of the wireless market, reducing the market to a duopoly.[1] Sufficient remedies to mitigate the harm to consumers and content creators resulting from this merger do not exist. The WGAW has joined with Center for Media Justice, Consumers Union, New America Foundation and Media Access Project to petition the FCC to deny this merger.

Key Concerns

- The acquisition is anticompetitive and not in the public interest.
- The merger would eliminate a key national competitor and grant AT&T substantial market power. It would enable AT&T to stifle innovation, increase prices, and decrease choices for wireless customers.
- Growth through acquisition arguably will reduce incentives to invest internally in network expansion and will lead to fewer jobs, rather than more, as the company has asserted.
- The reduction in competition would hinder the development of mobile wireless platforms used to create and distribute all manner of video programming and other types of artistic works and political expression.

This Merger will Impede the Development of a Competitive Market for Mobile Delivery of Content

The proposed merger of AT&T and T-Mobile will have a detrimental impact on the nascent market for wireless delivery of video programming. The growth of wireless devices such as smartphones and tablet computers has made mobile video viewing more attractive to consumers than ever before. With 28.7 million iPads sold since April 2010 it is clear mobile delivery of content is poised for rapid growth. As such, it is imperative that the wireless market remains competitive so that content creators and consumers may benefit from its development.

A merged AT&T would have the power to determine the future of the mobile marketplace, to the detriment of consumers and content creators. Facing only one competitor (Verizon) would reduce AT&T's incentives to develop robust video content offerings at reasonable prices. As the largest wireless distributor, AT&T would possess significant market power over content creators seeking wireless distribution. Content creators would have little power in negotiations with AT&T, as the company's control of almost half of the wireless market would necessitate acceptance of AT&T's terms in order to reach consumers. This merger would also prevent content creators from using the wireless market to reintroduce the diverse and independent content that has disappeared in traditional media due to deregulation and consolidation. Approval of this merger will prevent the development of a competitive and innovative market for video distribution.

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